

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1751 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SMT.PRAFULLABEN DHIRUBHAIKANJIYA
VERSUS
SHRI DHIRUBHAI KACHRABHAI KANJIYA

Appearance:

MS SEJAL MANDAVIA for Petitioner
MR PN BAVISHI for Respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 22/02/2000

C.A.V. JUDGMENT

#. Under the impugned order, the court below granted interim maintenance to the petitioner at the rate of Rs.300/= p.m. in the suit filed by her for maintenance under Section 18 of the Hindu Adoption and Maintenance Act, 1956. The petitioner filed the suit in the court below as an indigent person. It is really shocking and

astonishing that the learned trial court has not taken care of the provisions of Section 12 of the Legal Services Authorities Act, 1987. When a woman is entitled for free legal aid, I fail to see why this application is still pending. On the very first day, when this application has been placed before the court, the court should have immediately taken care and seen that the petitioner has been granted free legal aid and the requisite court fees etc. are paid on the suit and the advocate is also provided or where the advocate appear in the application has given undertaking that he will not charge any fees from her, he should have been permitted. This shows how the court below have been ignorant of these beneficial piece of legislation. This class of litigants are subjected to manifold difficulties and sufferings because of the fact that they are not knowing law and that the court is totally ignorant of this basic beneficial piece of legislation.

#. The courts should have been very careful to see that this class of litigant is not subjected to harassment, inconvenience and hardship. Because of this ignorance of this lady, she has permitted her advocate to file the suit as an indigent person and which results in delay in proceedings. Moreover, it unnecessarily consumes court's valuable time also in a matter where otherwise it was not called for. The advocate who is appearing for the petitioner has also shown total and scant disregard to the provisions of the Legal Services Authorities Act, 1987. He should have advised this litigant to go to the Legal Services Authority or Committee, as the case may be, and if it would have been advised so, she would not have filed the suit as an indigent person. It is equally the duty of the advocates to see that this class of litigant is made known of this right. Recipient of these benefits invariably are being made known of these by the advocates as well as the courts.

#. The courts should be very very careful and cautious in dealing with the matter of such class of litigants. When the matter is presented before him, immediately he has to take all the care so that this class of litigant is not harassed in any way in the proceedings and they get appropriate free legal services. It is also the duty of the courts to see that where the matter is filed through the advocate, there is no exploitation of this class of litigants. It has to be made known to that litigant that she is entitled for free legal services and meaning thereof. The advocate is also to be informed that if he is ready to provide free legal aid to the litigants, it is a different matter, but where he

declines to provide free legal services, the advocate may be engaged through legal aid committee. However, where the litigant of this category does not want free legal aid, the matter may be different and in that case also, the court has to take all the care that this class of litigant may not be exploited.

#. Under the impugned order, the learned trial court has granted a sum of Rs.300/= as interim maintenance to the petitioner as if she is a chattel or he has given some charity to her. The petitioner has come up with the case that the income of her husband is more than Rs.10,000/= per month. She claimed Rs.3,000/= as interim maintenance. The respondent was stated to be an auto advisor. The respondent has not produced any evidence regarding his income. In addition to this, the respondent was stated to have possessing 36 Vighas of agricultural land in Jam Jodhpur and the earning therefrom of his share was stated to be of Rs.14,000/= per year. The learned trial court has awarded interim maintenance of Rs.300/= p.m. to the wife without giving any reason, good, bad or indifferent. The court has not considered the basic principles which are to be followed while considering the application filed by wife for grant of interim maintenance. It is not the case where the courts are giving any charity or this class of litigants cannot be considered to be a chattel. The court has to tentatively arrive at a figure of net monthly income of the respondent and then it should have passed appropriate order to award interim maintenance. The learned trial court appears to have not known the basic principle of law or it has proceeded as if it is giving a charity to this litigant. The court even has not cared to address itself on the question of the income of the respondent and other important aspect. Before this court, the respondent filed reply-affidavit in which it is stated that the income of the respondent is hardly of Rs.2,000/= per month from the auto advisory. So far as the agricultural income is concerned, he has not disclosed what income he is having therefrom. However, he has admitted that 36 Vighas of agricultural land is of joint family property and further that due to scarcity there is no earning.

#. Here is a case where the wife has stated the income of husband to be Rs.10,000/= p.m. from the auto advisory service and Rs.14,000/= per year as agricultural income. The learned counsel for the respondent submitted that for this income of the respondent, the petitioner has not produced evidence. The respondent is a person who is in possession of best evidence, but has not produced any

evidence and felt contended and satisfied by stating that his earning from the work of auto advisor is only Rs.2000= p.m. So far as the agricultural income is concerned, he denied the same. So here is a case where there is word against word. But the respondent who is the person in possession of best evidence of his income, has not produced the same. The income as given by the petitioner should have been taken as the income of the respondent. In a matter where wife is claiming maintenance, the husband make all the efforts to see that she gets a meagre amount of maintenance by concealing true income. The learned counsel for the petitioner vehemently submitted that when the respondent has come for engagement he and his parents had disclosed themselves to be rich persons and the income of the petitioner was stated to be much more than Rs.10,000/= p.m. What she contends that when the bridegroom goes for engagement etc. he and his relations disclose themselves to be of high status and earning handsome amount but when the question does fall for giving by him the maintenance, the husband turns out to be the poorest person of the country.

#. A defence has also been taken in the affidavit by the advocate that until the application filed by petitioner to permit her to file suit as indigent person is decided the court has no jurisdiction to grant interim maintenance. I am constrained to observe that even in the High Court, the highest court in the State, the advocates are taking such defence which is totally in ignorance of the provisions of the Legal Services Authorities Act, 1987. In the facts of this case and more so where it is a stage of grant of interim maintenance, a reasonable sum to be awarded towards interim maintenance pending the final decision of the suit for maintenance. The learned trial court has not considered that Rs.300/= p.m. is hardly sufficient in these days of high price of essential commodities to meet out even one time meal expenses. Food, cloth and house are the three basic needs of a man/woman. While arriving at a reasonable figure of interim maintenance, the courts should have taken care of all these requirements. In addition to this, medical expenses may also be necessary. The amount of Rs.300/= p.m. is not even sufficient to make it easy for the lady, the petitioner herein to have three times tea. Normal living cost in these days is very high. Taking into consideration the totality of the facts of this case, it is in the interest of justice and to provide a reasonable sum of interim maintenance to the petitioner, the respondent is directed to pay Rs.2,000/= p.m. as interim maintenance to the petitioner. However,

this is only an interim maintenance which is subject to final decision in the suit. This amount of Rs.2,000/= p.m. is to be paid to the petitioner from the date of filing of the application for interim maintenance by the petitioner. The arrears are to be paid by first week of March, 2000 in addition to the regular monthly amount of maintenance.

#. The revision application is partly allowed. Rule is made absolute accordingly.

#. It is unfortunate that the petitioner has also not been informed of her right of free legal aid in this court and this revision application has been filed by her through advocate. The advocate has also not informed her or appears to have not informed to her of the right to have free legal aid. This lady has unnecessarily incurred heavy expenses of litigation of this civil revision application. The Gujarat High Court Legal Services Committee is directed to provide free legal aid to the petitioner in this case. The aggregate amount of expenses and the fees, if any, paid by her in case to her counsel exceeds the amount to be given to her by the Gujarat High Court Legal Services Committee. She has to bear the burden of difference. Where the amount of expenses and the fees which have been incurred and paid by her to the advocate is less than the amount of expenses and fees to be sanctioned by the committee, then to that extent only the amount has to be paid. Compliance of this order be reported to this court.

(S.K.Keshote, J.)

[sunil]